IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRITS No. 2277 of 2004

SURAJPAL SINGH
V/S
STATE OF RAJ. & ORS.

Mr. RAJEDNDRA SINGH, for the appellant / petitioner

Date of Order : 29.9.2004

HON'BLE SHRI N P GUPTA,J.

ORDER

The grievance of the petitioner, as submitted by learned counsel for the petitioner is that, against the adverse entries in ACRs, as communicated to him, he had preferred a representation to the Collector, who dismissed the same vide order dated 20.8.01, then the petitioner made a report to the Collector on 9.10.2001, and sent reminders. Thereafter the District Collector informed on 8.3.2002 that review petition was dismissed. According to the petitioner, he again submitted that he did not prefer review, but only sought a speaking order, and when he did not receive any response from the Collector, he made a detailed representation to the Divisional Commissioner praying for setting aside the adverse remarks for the year 1998-99 with all consequential benefits. According to para no.7 of the writ petition, copy of representation dated 8.5.2002 has been produced as Annex.9. The grievance of the petitioner then in para no.8 of the writ petition is that, when respondents have not decided his representation, even after passage of long time, then petitioner preferred SBCW Pet. No. 432/2003, and the same was disposed of by this court with the direction to the Divisional Commissioner to decide the representation, if it is pending and has not already been decided , expeditiously within a period of three months from the date of placing of the certified copy of this

order before the Divisional Commissioner, but then despite passage of long time, respondents have not decided the representation, and are sitting tight over the matter, and on the other hand petitioner has been denied the selection scale, for which he is fully entitled, while selection scale has been given to the juniors to the petitioner. With these allegations, the present petition has been filed for a direction to quash the adverse remarks or/and to be given benefit of selection scale.

Only argument made by learned counsel for the petitioner is that, his representation has not been decided, despite the order of this court passed in SBCW Pet. No. 432/2003 and without deciding the same, the selection scale has been given to the juniors. It is noticed here, that no submissions have been made on the merits of adverse remarks in ACR.

I have heard learned counsel for the petitioner, and perused the documents annexed with the writ petition, and in the circumstances, to be noticed below, requisitioned the file of SBCW Pet. No. 432/2003, referred to by petitioner in the writ petition, and have also perused that petition as well.

It is not in dispute that direction given by this court in SBCW Pet. No. 432/2003, was to decide the representation of petitioner “if it is pending and has not already been decided”, and was also directed to decide “representation expeditiously within a period of three months from the date of placing of the certified copy of this order before the Divisional Commissioner”. Obviously, the order was obtained on the assumption, and basis, that petitioner had made representation to the Divisional Commissioner against the order of the Collector, maintaining the ACR, and to seek setting aside of the remarks in ACR. In para no.7

of SBCW Pet. No.432/2003, at page 5, it has been pleaded by petitioner as under:-

> "That however, when he did not receive the appropriate response from the District Collector then he preferred the representation to the Divisional Commissioner vide representation dt. 9.10.2001 praying for setting aside of the adverse remarks in the ACR for the year 1998-99 with all consequential benefits. A copy of the same representation dt. 9.10.2001 is annexed herewith and is marked as Annex.3....."

After this para no.7, grounds start and then there is prayer. As against this, according to Annex.10, annexed with the present writ petition, it was on 18.2.2003 that petitioner enclosed the copy of order on 3.2.2003, and thereupon he received Annex.11, being dated 16.6.03, conveying that petitioner has forwarded the copy of order passed in SBCW Pet. No. 432/2003, but the representation referred to in the order, has not been received in the office, and the petitioner was called upon to produce the copy. In reply, according to the petitioner, vide Annex.12, he purportedly forwarded the copy of representation.

It is a different story, that from the perusal of Annex.12, photo stat copy, it does not transpires that it was ever received by the Divisional Commissioner, rather some noting are made thereon about some numbers and dates of Tehsildar, Collector and Commissioner. Be that as it may. What is significant to note is, that even in Annex.12, it has nowhere been asserted that, contents of Annex.11 are wrong, about representation having not been sent earlier. Of course, the petitioner has purportedly enclosed the copy of representation, but then the things are not as simple as the petitioner wants this court to believe, rather they are intriguing.

During the course of arguments, learned counsel for the petitioner was asked, as to whether the copy of representation which was said to be pending before Divisional Commissioner was produced in the earlier writ petition, and the answer was given in affirmative. It is for the reason, that file of earlier writ petition No.432/2003 was requisitioned by me, and the State of affairs of file no.432/2003 have already re-capitulated above. Even at the cost of repetition, it may be noticed, that according to the averments made in writ petition no. 432/2003, representation was made by petitioner to the Divisional Commissioner on 9.10.2001, and that was produced with that writ petition as Annex.3, while according to the averments made in the present writ petition, representation was made on 8.5.2002, copy whereof has been produced as Annex.9, and a bare look at the two documents, being Annex.3 of writ petition no. 432/2003, and Annex.9 of present writ petition, shows that these documents are entirely different documents; inasmuch as Annex.3, annexed with writ petition no. 432/2003, is addressed to Collector only, and does not even purport to have been endorsed to Divisional Commissioner, while Annex.9, annexed with present writ petition, is addressed to Divisional Commissioner, and purports to have been sent through proper channel, but then there is nothing, even prima facie, to show as to when it was sent, to whom it was actually delivered, much less is there any material to show that it was ever delivered to anybody.

Thus the inevitable conclusion is that no representation was ever made to the Divisional Commissioner, and the order dated 3.2.2003 in writ petition no. 432/2003, clearly appears to have been obtained by the petitioner by not projecting correct state of affairs, and it appears, that taking advantage of said order, he has tried to now manipulate the representation Annex.9. Thus there is nothing to disbelieve Annex.11 informing the petitioner that no representation was ever received by

Divisional Commissioner. That being the position, the grievance of the petitioner cannot be entertained, that despite the orders of this court, representation is not being decided by Divisional Commissioner, and by sitting tight over it, the selection scale is given to the persons junior to the petitioner. As noticed above, nothing was submitted on merits of adverse remarks.

Thus, the writ petition has no force, and is hereby dismissed summarily.

(N P GUPTA),J.

/Srawat/